Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Loral Skynet Network Services, Inc.	)	File Nos.: SES-MOD-20040825-01242
	)	
Application for Authority to Provide Communication Services via the Telstar 18 Satellite from Loral's Fixed Earth Station in Kapolei, Hawaii, using the Conventional C-Band Frequencies	)	Call Sign: E980250

ORDER AND AUTHORIZATION

Adopted: July 1, 2005 **Released: July 1, 2005**

By the Deputy Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. By this Order, we grant authority to Loral Skynet Network Services, Inc. (Debtor-in-Possession) (Loral)[1] to add the Telstar 18 satellite,[2] located at the 138° E.L. orbital location and licensed by the Kingdom of Tonga, as a point of communication for its Kapolei, Hawaii earth station using the conventional C-band frequencies.[3] Grant of this application represents another step in implementing U.S. market-opening commitments to satellites licensed by other countries. Allowing the Telstar 18 satellite to provide fixed-satellite service (FSS) to the U.S. market using C-band frequencies will promote competition in the United States by providing

[1] LSNS (Debtor-in-Possession), a U.S. corporation, is a wholly-owned subsidiary of Loral Space & Communications Corporation (Debtor-in-Possession), also a U.S. corporation. Loral Space & Communications Corporation is wholly-owned and controlled by Loral Space & Communications, Ltd. (Debtor-in-Possession) (Loral Ltd. DIP), a Bermuda company. Loral Ltd. DIP's home market is the United States. Loral Application at Exhibit A.

[2] In total, the spacecraft contains 38 C-band transponders (24 of which operate in the conventional C-band and 14 of which operate in the extended C-band) and 16 Ku-band transponders. The conventional and extended C-band on the spacecraft is licensed by the Kingdom of Tonga under the name "Tongasat C/KU-3." The Ku-band on the spacecraft is licensed by the People's Republic of China under the name of "Apstar V." Loral refers to the spacecraft with all its payloads as "Telstar 18." For ease of reference, "Telstar 18" refers only to the conventional C-band payload that is the subject of this order. The "conventional C-band" refers to frequencies in the 3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space) bands.

[3] We previously granted Loral special temporary authority (STA) to communicate with Telstar 18 using the conventional C-band frequencies. File Nos. SES-STA-20040824-01206, SES-STA-20041213-01832, SES-STA-20050210-00166, and SES-STA-20050413-00443. *See* Satellite Communications Services Information Re: Actions Taken, *Public Notice,* 2005 WL 974750, Report No. SES-00708 (April 27, 2005).

consumers more alternatives in choosing communications providers and services.

II. BACKGROUND

2. The Commission's *DISCO II Order*[4] implemented the market-opening commitments made by the United States in the World Trade Organization ("WTO") Agreement on Basic Telecommunications Service ("WTO Basic Telecom Agreement"). These commitments allow new entrants and technologies into the U.S. market, thus advancing the growth of satellite services around the globe. In particular, the *DISCO II Order* established a framework under which the Commission will consider requests for non-U.S. satellites to serve the United States. To implement this framework, the Commission, among other things, established a procedure by which a service provider in the United States could request immediate access to a foreign in-orbit satellite that would serve the U.S. market.[5] This procedure requires a U.S. earth station operator seeking to communicate with a non-U.S. satellite to file an earth station application for an initial license or for a modification of its existing earth station license, listing the foreign satellite as a permitted point of communication.

3. Because the Commission does not issue duplicative U.S. licenses for space stations licensed under the jurisdiction of another administration,[6] a U.S. earth station application often represents the Commission's first opportunity to evaluate whether the foreign space station complies with the Commission's technical, legal, and financial qualification requirements. The first earth station application seeking to communicate with a particular foreign satellite must therefore include the same detailed information about the space station and its operations that the Commission requires from U.S. space station applicants.[7]

4. The Telstar 18 satellite was launched on June 28, 2004, and placed into service on August 18, 2004.[8] On August 25, 2004, Loral filed an application to add the Telstar 18 satellite as a point of communication to the earth station authorization it holds for a 13-meter, C-band antenna located at Kapolei, Hawaii. In addition, Loral seeks to modify its earth station authorization to add emission designators and frequencies related to the provision of service via the Telstar 18 satellite. On September 22, 2004, we placed Loral's application on public notice as accepted for filing.[9] No comments were filed in response to Loral's application.

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[4] Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *Report and Order*, 12 FCC Rcd 24094 (1997) ("*DISCO II Order"*).

[5] *Disco II* at 24174, para. 186.

[6] *Id.* at 24174, para. 188.

[7] *See* 47 C.F.R. § 25.137.

[8] On June 22, 2004, the Commission granted Loral's request to provide Tracking, Telemetry, and Command ("TT&C") for the Telstar 18 satellite via the same earth station that is the subject of this application. *See* Satellite Communications Information Re: Actions Taken, *Public Notice,* 2004 WL 1393918, Report No. SES-00616, (June 23, 2004) (granting File Nos. SES-MOD-20040115-00131, as amended by SES-AMD-20040510-00662).

[9] *See* Satellite Communications Services Re: Satellite Radio Applications Accepted for Filing, *Public Notice,* 2004 WL 2110673, Report No. SES-00642 (September 22, 2004).

III. DISCUSSION

A. General Framework

5. In *DISCO II,* the Commission set forth the public interest analysis applicable in evaluating applications to use non-U.S.-licensed space stations to provide satellite service in the United States. This analysis considers the effect on competition in the United States,[10] eligibility and operating requirements,[11] spectrum availability,[12] and national security, law enforcement, foreign policy, and trade concerns.[13] We evaluate the Loral request under this framework.

B. Competition Considerations

6. In the *DISCO II Order,* the Commission adopted two different frameworks under which it would evaluate the foreign entrant's effect on competition in the U.S. satellite market. First, in cases where the non-U.S. satellite is licensed by a country that is a member of the World Trade Organization and will provide services covered by the U.S. commitments under the WTO Basic Telecom Agreement, the Commission established a presumption that entry will further competition in the United States. The U.S. commitments include FSS, but specifically exclude direct-to-home (DTH) services, Direct Broadcast Satellite Service (DBS), and Digital Audio Radio Service (DARS).[14] This means that we will presume that WTO-Member-licensed satellites providing WTO-covered services satisfy the competition component of the public interest analysis. The Commission concluded that the market access commitments made under the WTO Basic Telecom Agreement will help ensure the presence and advancement of competition in the satellite services market and yield the benefits of a competitive marketplace to consumers in the United States and other countries.[15] In contrast, the Commission conducts an "ECO-Sat" analysis for non-U.S. satellites licensed by countries that are not WTO members. Under this analysis, applicants seeking to access a foreign satellite must demonstrate that U.S.-licensed satellites have effective competitive opportunities to provide analogous services in the country in which the satellite is licensed and in all countries in which communications with the U.S. earth station will originate or terminate.[16]

7. In this case, Loral is seeking authority to provide FSS using the conventional C-band frequencies of the Telstar 18 satellite. The conventional C-band payload on Telstar 18 operates under authority from the Kingdom of Tonga. Tonga is not a WTO-Member country.[17]

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[10] *DISCO II Order,* 12 FCC Rcd at 24107-56, paras. 30-145.

[11] *Id.* at 24159-69, paras. 151-74.

[12] *Id.* at 24157-59, paras. 146-50.

[13] *Id.* at 24169-72, paras. 175-82.

[14] *DISCO II Order,* 12 FCC Rcd at 24104, para. 25.

[15] *Id.* at 24112, para. 39.

[16] 47 C.F.R. § 25.137(a).

[17] Tonga has requested accession to the WTO and a WTO working party is currently reviewing its request. Tonga currently holds "Observer" status at the WTO. Tonga's accession status can be found on the WTO website at www.wto.org/english/thewto_e/acc_e/a1_tonga_e.htm.

Thus, the presumption regarding WTO-Member-licensed satellites providing WTO-covered services does not apply in this instance and Loral must demonstrate that U.S. FSS operators have effective competitive opportunities in Tonga and in all non-WTO route markets Telstar 18 will serve.[18]

8. Loral states that Tonga maintains an "open skies" policy[19] under which it has authorized U.S.-licensed satellites to provide service to Tonga. Specifically, Loral states that Tonga has authorized satellites in the Intelsat fleet and PanAmSat Corp.'s PAS-8 satellite to provide FSS in the conventional C-band to Tonga.[20] In support of its contention, Loral has provided a letter from the Kingdom of Tonga confirming its open skies policy.[21] Loral indicates that, aside from service to Tonga, all other communications over Telstar 18 will be between the Kapolei earth station and WTO-Member countries that lie within the satellite's coverage area. Loral notes that the Commission has previously stated that it will not apply the ECO-Sat test to "WTO Member route markets served by non-U.S. satellites licensed by non-WTO countries."[22]

9. Loral has demonstrated that U.S.-licensed satellites have effective competitive opportunities to provide FSS in the Kingdom of Tonga and in all countries in which communications with its Kapolei earth station will originate or terminate. The Tonga Open Skies October 2004 Letter confirms the Kingdom of Tonga's "open skies" policy under which it has authorized U.S.-licensed satellites to provide analogous FSS to its territory. Further, there is nothing in the record that contradicts Loral's statements or the letter from the Tongan government. In addition, as Loral correctly noted, the Commission has determined not to apply an ECO-Sat test to WTO-Member route markets.[23] In making this determination, the Commission concluded that all WTO Members are governed by the general obligations of the General Agreement on Trade in Services, which provides protection against discriminatory conduct on WTO-Member route markets.[24] Accordingly, we find that the Telstar 18 satellite's proposed entry into the U.S. market for the purpose of offering FSS services in the conventional C-bands, excluding DTH, DBS, and DARS, will enhance competition for these services in the U.S. market, including the U.S. Pacific Territories. Consistent with Loral's business plan, we will authorize Loral to provide communication services from its Kapolei, Hawaii earth station to points in Tonga, the U.S. Pacific Territories, Alaska, Hawaii, and WTO-Member countries within the satellite's footprint.

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[18] 47 C.F.R. §§ 25.137(a)(1) and (a)(2).

[19] The phrase "open skies" policy generally refers to a policy in which a country attempts to accommodate the maximum number of systems possible to provide a particular service in order to maximize entry and competition in its satellite service market. *See* 2002 International Bureau Biennial Review Staff Report, 18 FCC Rcd 4196, 4199 para. 6 (2002).

[20] Loral Application at Exhibit D, page 2.

[21] Loral Application at Exhibit D, page 2. *See* Letter from Paula P. Ma'u, Deputy Secretary, Prime Minister's Office, Kingdom of Tonga, to Thomas Tycz, Chief, Satellite Division, International Bureau, FCC (October 25, 2004) ("Tonga Open Skies October 2004 Letter").

[22] *See DISCO II Order* at 24131, paras. 82-83.

[23] *See DISCO II Order*, at 24131, paras. 82-83.

[24] *Id.*

C. Eligibility Requirements

a. Legal Qualifications

10. In the *DISCO II Order*, the Commission stated that it would require non-U.S. space station operators to meet the same technical, legal, and financial qualifications that U.S.-licensed space station operators must meet to obtain a license.[25] We find nothing in Loral's application to suggest that it is not legally qualified to provide service to the United States using the requested frequencies on the Telstar 18 satellite.

b. Technical Qualifications

11. The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary satellites.[26] This policy permits the maximum use of the geostationary satellite orbit.[27] All space stations, including non-U.S. satellites seeking to serve the U.S. market, must comply with the Commission's technical requirements designed to permit two-degree orbital spacing before being authorized to provide service in the United States.[28] The Commission may license satellites that are not two-degree compliant (or earth stations seeking to access such), but only when the applicants can demonstrate that their operations will not cause harmful interference to existing compliant satellite operations. Further, non-conforming operations are authorized conditioned upon a licensee accommodating future satellite networks serving the United States that are two-degree compliant.

12. Based on our review of the technical information Loral submitted, we conclude that the Telstar 18 C-band space station generally complies with all applicable Commission rules. Loral has requested waivers of Sections 25.210(a)(3), 25.202(g), and 25.114(d)(3).[29] We discuss Loral's waiver requests below.

13. Section 25.210(a)(3) of the Commission's rules requires that all space stations in the FSS used for domestic service in the C-band shall be capable of switching polarity upon ground command.[30] The Commission's rules require polarity-switching capability for two reasons: to permit U.S.-licensed satellites the flexibility to be assigned to different U.S. orbital

[25] *Id.* at 24161-63, paras. 154-59.

[26] *See* 47 C.F.R. § 25.140; Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, *Report and Order,* CC Docket No. 81-704, FCC 83-184, 54 Rad. Reg. 2d 577 (1983); *summary printed in* Licensing Space Stations in the Domestic Fixed-Satellite Service, 48 F.R. 40233 (1983).

[27] *See* Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, *Order and Authorization,* 11 FCC Rcd 13788, 13790, para 6 (1996). Prior to the Commission's adoption of the two-degree spacing policy, satellites in the geostationary satellite orbit were usually spaced three or four degrees apart. By adopting rules that enabled satellite operators to place their space stations two degrees apart, the Commission was able to accommodate more geostationary satellites.

[28] *See* Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking,* 18 FCC Rcd 10760, para 300 (2003).

[29] Loral Application at Exhibit B.

[30] 47 C.F.R. § 25.210(a)(3).

positions and to mitigate potential interference between adjacent FSS systems transmitting analog TV signals. The Commission may waive its rules when there is good cause to do so and when waiver would not be inconsistent with the purpose of the rule.[31] There is no satellite authorized to serve the United States within two degrees of the Telstar 18 satellite. Thus, Telstar 18's operations in the conventional C-band will not cause harmful interference to existing satellite systems serving the United States. We, therefore, conclude that there is good cause to grant Loral a waiver of section 25.210(a)(3) and that a waiver in this instance is not inconsistent with the purpose of the rule. As a condition of this waiver, however, Loral is precluded from using the Kapolei earth station to transmit or receive analog television signals from the Telstar 18 satellite, and Telstar 18 must accommodate future satellite networks serving the United States that are two-degree compliant.[32]

14. Section 25.202(g) of the Commission's rules requires that telemetry, tracking, and telecommand (TT&C) functions be conducted at either or both edges of the allocated frequency bands.[33] We find that the C-band operations of the Telstar 18 satellite comply with this requirement. This is because, on the Telstar 18 satellite, the majority of TT&C functions are placed at the edges of the conventional C-band frequencies.[34] Because the satellite incorporates extended C-band frequencies in its C-band payload, however, certain TT&C functions are located on frequencies which are on the edges of both the conventional and extended bands.[35] Under these circumstances, we conclude that Loral has met the requirements of the rule and therefore it is unnecessary to grant a waiver of this rule.

15. Section 25.114(d)(3) of the Commission's rules specifies that space station applicants must include contour maps with their space station applications.[36] Consistent with the requirement in Section 25.114(d)(1) that an applicant provide a "general description of overall system facilities, operations and services," Loral indicates that the Telstar 18 satellite operates with one C-band beam and two Ku-band beams.[37] Loral has provided contour maps for Telstar 18's C-band beam and for one of its two Ku-band beams.[38] Loral is not seeking authority to use Telstar 18's Ku-band frequencies in this application.[39] Thus, Loral, by providing C-band contour

[31] 47 C.F.R. § 1.3.

[32] *See* Mabuhay Philippines Satellite Corp. Petition for Declaratory Ruling, Application of Loral CyberStar, Inc. for Authority to Operate Two Transmit/Receive Earth Stations at Kapolei, Hawaii, for Use in Conjunction with the Mabuhay Satellite Located at 146° E.L., *Order and Authorization*, 15 FCC Rcd 23671, 23676 para. 13 (2000) ("*Mabuhay Order*"). In the *Mabuhay Order,* the Commission granted a waiver of section 25.210(a)(3) and imposed the same condition imposed here.

[33] 47 C.F.R. § 25.202(g).

[34] Loral Application at Exhibit B, page 2.

[35] *Id.*

[36] 47 C.F.R. § 25.114(d)(3).

[37] Loral Application at Exhibit B, page 3.

[38] *Id.* Although Loral is seeking authority to serve the United States with only the C-band beam, it has provided information for both C- and Ku- band operations out of an abundance of caution. *Id.*

[39] *Id.*

information, has provided the necessary information for "each transmit and each receive antenna beam … requested," as required by Section 25.114(d)(3), and therefore it is unnecessary to grant a waiver of this rule.

c. **Financial Qualifications**

16. In the *First Space Station Reform Order,* the Commission eliminated the financial requirements then in place and replaced them with a bond requirement.[40] In accordance with this requirement, any entity awarded a license for a geostationary satellite must execute a payment bond, payable to the U.S. Treasury, within 30 days of the date of the license grant.[41] This requirement is intended to ensure that licensees are financially able and committed to implementing their systems in a timely manner. The bond is payable upon failure to meet any of the implementation milestones included in every license, where the licensee has not provided adequate justification for extending the milestone. Licensees may reduce the amount of the bond upon meeting each milestone. Once the licensee meets the last milestone, that is, it launches the satellite, it no longer has any bond obligation. This requirement applies to both U.S.-licensed satellites and satellites licensed by other countries that seek to serve the U.S. market.[42] Because Telstar 18 is in-orbit and operating, Loral is not required to post a bond.

D. Spectrum Availability

17. In the *DISCO II Order,* the Commission determined that, given the scarcity of geostationary-satellite orbit locations and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign satellite to serve the United States.[43] Specifically, the Commission stated that when grant of access would create interference with U.S.-licensed systems, the Commission may impose technical constraints on the foreign satellite's operations in the United States or, when the interference cannot be remedied, deny access.[44]

18. The Telstar 18 satellite will provide service to the United States from the 138° E.L. orbital location in the conventional C-band. There are no other satellites authorized to serve the United States operating in the conventional C-band that are located within two degrees of the Telstar 18 satellite. Loral has supplied an interference analysis demonstrating that the Telstar 18 satellite is compatible with the Commission's two-degree spacing environment in the conventional C-band. Consequently, allowing the Telstar 18 satellite to serve the United States from the 138° E.L. orbital location in the conventional C-bands will not affect operations of any U.S.-licensed satellites in the conventional C-band or contravene the Commission's spectrum management policies. In addition, as in all other orders permitting non-U.S. satellites to serve

[40] *See* Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking,* 18 FCC Rcd 10760, 10826, Para. 170 (2003) ("*First Space Station Reform Order"*).

[41] *See* 47 C.F.R. § 25.165.

[42] *First Space Station Reform Order* at 10875, para. 309.

[43] *DISCO II Order* at 24159, para. 150.

[44] *Id.*

the United States, we require all communications between earth stations in the United States and Telstar 18 in the conventional C-bands to comply with all satellite coordinations reached by Tonga and other administrations.

E. Other Requirements

19. As described above, in accordance with the *DISCO II Order,* national security, law enforcement, foreign policy, and trade concerns are included in the public interest analysis.[45] There is nothing in Loral's application that raises any such concerns.

IV. CONCLUSION

20. Based on the foregoing analysis, we conclude that Loral's communications with the Telstar 18 satellite will be consistent with the Commission's rules and policies regarding U.S. access to space stations licensed by foreign administrations. We therefore grant Loral's application, subject to the conditions set forth in this Order, finding such grant to be in the pubic interest.

V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED that, pursuant to Sections 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 C.F.R. §§ 303(r), 308, 309, 310, and Sections 25.115 and 25.121 (a) of the Commission's rules, 47 C.F.R. §§ 25.115 and 25.121 (a), the Application for Authority to Provide Communication Services via the Telstar 18 Satellite from Loral's Fixed Earth Station in Kapolei, Hawaii, using the Conventional C-Band Frequencies, File No. SES-MOD-20040825-01242, IS GRANTED. Accordingly, Loral Skynet Network Services, Inc. (Debtor-in Possession) IS AUTHORIZED to provide fixed-satellite services, excluding Direct-to-Home service, Direct Broadcast Satellite service, and Digital Audio Radio service, by accessing the Telstar 18 satellite located at the 138° E.L. orbital location in the conventional C-bands (3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space)), subject to the following conditions:

a. Loral is prohibited from sending or receiving any Direct-to-Home service, Direct Broadcast Satellite service, and Digital Audio Radio service to or from this satellite.

b. Loral is only authorized to provide communication services from its Kapolei, Hawaii earth station to points in Tonga or WTO-Member countries within the subject satellite's footprint.

c. Loral is prohibited from sending or receiving analog video services or any FM video television services to or from the satellite.

d. With reference to Article 18 of the ITU Radio Regulations, the United States is not the "government of the country to which" the satellite "is subject," and is not

[45] *DISCO II Order* at 24170-72, paras. 178-82.

acting on behalf of any other government. Operations of earth station call sign E980250 are expressly conditioned upon that space station having been licensed, within the meaning of Article 18, by the government of the country to which the station is subject.

e. Loral is afforded 30 days from the date of release of this grant and authorization to decline this authorization, as conditioned. Failure to respond within this period will constitute formal acceptance of the authorization, as conditioned.

22. IT IS FURTHER ORDERED that Loral's request to waive Section 25.210(a)(3) of the Commissions rules, 47 C.F.R. § 25.210(a)(3), IS GRANTED as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Fern J. Jarmulnek
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